THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 25877 OF 1998

Dated 12th April 2007

Between:

B.Narsimha Chary

…Petitioner

and

The Commissioner of Settlement, Survey
AndLand Records, Hyderabad & others.

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.25877 OF 1998

O R D E R:

The petitioner claims to have purchased the property, bearing No.15-8-873, Old Feelkhana, Hyderabad, from one Mr.Mahaboob Ali, in or around the year 1970. The area, where the plot is situated, was a rehabilitation camp for plague victims, and subsequently, the occupants have constructed houses. In recognition of the longstanding possession, the Government issued patta certificates to several individuals.

Respondents 4 and 5 filed O.S.No.5064 of 1987, in the Court of V Assistant Judge, City Civil Court, Hyderabad, against the petitioner and some others. The suit was decreed *ex parte*, and thereafter, they filed E.P.No.3 of 1988, and secured possession of the premises from the petitioner. An application for restoration, being E.A.No.30 of 1988, was filed by the petitioner in the Executing Court. The same was allowed, and the 4th respondent filed A.S.No.185 of 1991, in the Court

of Additional Chief Judge (Temporary), City Civil Court, Hyderabad. The appeal was dismissed on 13.9.1995. Second Appeal No.534 of 1995, filed against it, was also dismissed. Thereafter, the petitioner got the possession of the premises, by filing E.P.No.154 of 1995.

During the pendency of the litigation, between himself and respondents 4 and 5, the petitioner filed an application to the Revenue Divisional Officer, Nampally, Hyderabad, the 3rd respondent herein, for grant of patta. The 3rd respondent refused to grant patta, through memo dated 21.2.1990, on account of the pendency of the litigation. However, 3rd respondent granted patta in favour of respondent No.5, through proceedings dated 8.1.1993.

The petitioner filed W.P.No.16856 of 1993, against the said patta. The writ petition was disposed of on 24.4.1997, directing the 3rd respondent, to reconsider the matter, after civil litigation between the petitioner and respondents 4 and 5, is concluded. It was in this context, that the 3rd respondent examined the matter afresh, and granted patta in favour of the petitioner, duly cancelling the one, in favour of 5th respondent, through his proceedings dated 25.7.1997.

The respondents 4 and 5 filed an appeal, before the District Revenue Officer, Hyderabad, the 2nd respondent herein, against the orders dated 25.7.1997, passed by the 3rd respondent. Through an order dated 30.5.1998, the 2nd respondent dismissed the appeal, but set aside the order passed by the 3rd respondent, on the ground that the record discloses that the land belongs to A.P. Housing Board and the Government in Housing Department.

Challenging this order, the petitioner filed revision before the 1st respondent, and thereafter, respondent No.6. Both of them refused to entertain the revision, on the ground that they do not have jurisdiction. Hence, this writ petition.

Sri M.V.Durga Prasad, learned counsel for the petitioner, submits that the 2nd respondent committed a grave irregularity, in dismissing the appeal preferred by the respondents 4 and 5, and at the same time, setting aside the order passed by the 3rd respondent in favour of the petitioner. He submits that the only ground, on the basis of which the impugned order was passed, was not urged, either by respondents 4 and 5, or any other person, and in that view of the matter, the impugned order cannot be sustained.

Learned Government Pleader for Revenue and learned counsel for respondents 4 and 5, on the other hand, submits that it is always competent for the 2nd respondent to review the matter, in exercise of power available under Section 166-B of the A.P. (Telangana Area) Land Revenue Act, and once the record discloses that the land belongs to the A.P.Housing Board and the Government, no exception can be taken to the impugned order.

The application for grant of patta made by the petitioner was not considered by the 3rd respondent, on the ground that the dispute was pending between the petitioner and respondents 4 and 5, in a civil court. Having taken such a stand, the 3rd respondent granted patta in favour of 5th respondent, even while that very litigation was pending. It was in this context, that this court passed an order in W.P.No.16856 of 1997, directing the 3rd respondent, to consider the matter, afresh. Accordingly, the

3rd respondent examined the matter, after the civil litigation between the parties assumed finality. The patta was granted in favour of the petitioner.

In the appeal preferred by the respondents 4 and 5, the 2nd respondent had undertaken extensive discussion, only on the title of the A.P.Housing Board over the property. Hardly did he pay the attention to the rights *interse* between the petitioner and respondents 4 and 5. The only discussion undertaken, *vis-à-vis* the rights of the parties and the conclusion arrived at by the 2nd respondent is as under:

> "Now adverting to the Civil litigation in between the parties to this case, it may be said that the respondent B.Narasimha Chary has won at all stages and in all courts and he has got orders of the Court in his favour for the restoration of his possession to the extent of Malgi in premises No.15.8.593.
>
> The appellant could not get any orders in his favour in any court. In view of various court judgments it appears that the appellant has made a futile effort by filing this appeal.
>
> From the foregoing facts, it is proved beyond doubt that the premises 15.8.593 is Housing Board property. Because of this fact only the Housing Board, as well as Government in Housing Department have been asking this office to cancel all the patta certificates issued by the Revenue Divisional Officer in 1986. Therefore, issuance of any patta certificate at this stage will be illegal and without jurisdiction.
>
> Under the circumstances the appeal is dismissed. The orders of the Revenue Divisional Officer in ordering issue of patta certificate in favour of Smt.Manemma W/o.B.Narasimha Chary are also set aside being without jurisdiction. B.Narasimha Chary is however directed to approach the Housing Board, who is owner of the property and lodge his claim."

The course of action adopted by the 2nd respondent is untenable in

law. The dismissal of the appeal must have ended in upholding of the patta granted in favour of the petitioner. On the other hand, if the patta were to have been set aside, the appeal ought to have been allowed. The dismissal of the appeal, on the one hand and cancellation of patta, on the other, are totally irreconcilable. This court would have set aside the impugned order and left the matter at that, on account of the illegality committed by the

2nd respondent. However, respondents 4 and 5 were denied the benefit of pursuing their further remedies, since patta granted in favour of the petitioner was set aside, though the appeal preferred by them was dismissed. In that view of the matter, the matter needs to be considered by the 2nd respondent, afresh, without making any reference to the title or rights of the A.P. Housing Board, since that was never projected before this court.

For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. The matter is remanded to the 2nd respondent, for fresh consideration. It is directed that the

2nd respondent shall not make any reference to the rights of the A.P.Housing Board, *vis-à-vis* the property, and decide the merits purely on the claims made by the petitioner, on the one hand, and respondents 4 and 5, on the other hand. Till the disposal of the appeal, *status quo* obtaining as on today, shall be continued. There shall be no order as to costs.

12th April 2007

PAN